

1-330A051

HELM
FINANCIAL CORPORATION

One Embarcadero Center • San Francisco, CA 94111

415/398-4510

VIA AIR COURIER

November 25, 1991

Ms. Mildred Lee
Recordations Unit
Interstate Commerce Commission
12th & Constitution Avenue, N.W.
Washington, D.C. 20423

17599
RECORDATION NO. FILED 1423
NOV 26 1991 2:15 P.M.
INTERSTATE COMMERCE COMMISSION

Dear Ms. Lee:

Enclosed are two (2) Railcar Lease Agreements dated as of November 1, 1991 between the following parties:

Lessor: Federal Deposit Insurance Corporation
c/o BOT Financial
125 Summer Street Suite 32
Boston, MA 02110-1625

Lessee: Paducah & Louisville Railway, Inc.
1500 Kentucky Avenue
Paducah, Kentucky 42001

The equipment involved in this transaction is as follows:

Equipment: (49) Covered Hoppers
See Annex A for Car Numbers

Please file this agreement as a primary document. The filing fee of \$16 is enclosed. Thank you.

Sincerely,

Karen Rahnasto

Karen Rahnasto
Fleet Operations Administrator

KR\tw
Enclosures

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NOV 26 2 06 PM '91
MOTOR CARRIER UNIT

Interstate Commerce Commission
Washington, D.C. 20423

11/17/91

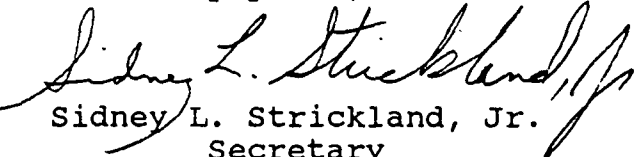
OFFICE OF THE SECRETARY

Karen Rahmasto
Fleet Operations Administrator
Helm Financial Corporation
One Embarcadero Center
San Francisco, California 94111

Dear Sir:

The enclosed document(s) was recorded pursuant to the provisions of Section 11303 of the Interstate Commerce Act, 49 U.S.C. 11303, on 11/26/91 at 2:15pm, and assigned recordation number(s). 17599, 17605 & 17606

Sincerely yours,


Sidney L. Strickland, Jr.
Secretary

RAILCAR LEASE AGREEMENT

RECORDATION NO. 17599 FILED 1023
NOV 26 1991 2:15 P.M.
INTERSTATE COMMERCE COMMISSION

Agreement, dated as of November 1, 1991 (hereinafter the "Effective Date"), by and between Federal Deposit Insurance Corporation, as Receiver for New Bank of New England, N.A. (Assignee of NEMLC Leasing Associates No. 1) (hereinafter called the "Lessor"), and Paducah & Louisville Railway, Inc., a Kentucky corporation (hereinafter called the "Lessee").

1. Scope of Agreement

A. Lessor agrees to lease to Lessee, and Lessee agrees to lease from Lessor, railroad equipment of the type and description as set forth in Equipment Schedule 1 executed by the parties concurrently herewith and made a part of the Agreement.

B. The scheduled items of equipment are hereinafter called collectively the "Cars".

2. Term

The term of this Lease with respect to each Car shall begin on the Effective Date, and, unless sooner terminated in accordance with the provisions of the Agreement shall end on October 31, 1994.

3. Supply Provisions

The Lessee hereby accepts the Cars and acknowledges that each Car is subject to the terms and conditions of this Agreement.

The obligations of the Lessee hereunder (including, but not limited to, the obligations of the Lessee under Sections 5 and 9 hereof) shall survive the expiration or sooner termination of this Agreement.

4. Railroad Markings and Record Keeping

A. Lessee will cause each Car to be kept numbered with its identifying railroad markings as set forth in Exhibit 1 hereto, at the cost and expense of Lessee.

B. At no cost to Lessor, Lessee shall during the term of this Agreement cause to be prepared for Lessor's signature and filing all documents relating to the maintenance and record keeping functions involving the Cars. Such documents shall include (i) appropriate AAR documents including an application, if applicable, for relief from AAR Car Service Rules; and (ii) such other reports as may be required from time to time by the ICC and/or other regulatory agencies.

C. Lessee, or its agent, shall, at its own expense and on behalf of Lessor, perform all record keeping functions relating to the use of the Cars by Lessee and other railroads in accordance with AAR railroad interchange agreements and rules, such as car hire reconciliation.

D. All record keeping performed by Lessee hereunder and all record of payments, charges and correspondence related to the Cars shall be separately recorded and maintained by Lessee in a form suitable for reasonable inspection by Lessor from time to time during regular Lessee business hours. Lessee shall supply Lessor with such information regarding the use of the Cars by Lessee on its railroad line as Lessor may reasonably request.

5. Maintenance, Taxes and Insurance

A. Except as otherwise provided herein, Lessee will pay all costs, expenses, fees and charges incurred in connection with the use and operation of each of the Cars during its lease term and any extension thereof, including but not limited to repairs, maintenance, and servicing.

B. Lessee shall make or cause to be made such inspections of, and maintenance and repairs to, the Cars as shall be necessary to maintain the Cars in good operating condition throughout the lease of such Cars. Lessee shall make, or cause to be made, at Lessee's expense, all alterations, modifications or replacement of parts, as shall be necessary to maintain the Cars in good operating condition throughout the term of the lease of such Cars, except any such alterations, modifications or replacement of parts, dictated by any regulatory body (ICC, FRA, AAR, etc.) shall be done at the expense of Lessor; provided, however, that the Lessor may, in its reasonable judgement based upon cost and economic value of such modifications or alterations in relation to the then estimated fair market value of the Cars, declare this Lease terminated for those so affected as of the date such repairs or alterations are required as a condition of use of the Cars by Lessee. Lessee shall not make any alterations or additions to the Cars without Lessor's prior written consent. If Lessee makes an alteration or addition to any Car with or without Lessor's prior written consent, title to any such alteration or addition shall be and remain with Lessor.

C. Lessee will at all times while this Agreement is in effect, be responsible for the Cars while on Lessee's railroad tracks in the same manner that Lessee is responsible under Rule 7 of the Code of Car Hire Rules and Interpretations - Freight for cars not owned by the Lessee on Lessee's railroad tracks. Lessee shall protect against the consequences of an event of loss involving the Cars while on Lessee's railroad tracks by either obtaining insurance or maintaining a self

insurance program which conforms to sound actuarial principles. If Lessee elects to carry insurance, it shall furnish Lessor with a certificate of insurance with respect to the insurance carried on the Cars signed by an independent insurance broker. All insurance shall be taken out in the name of Lessor (or its assignee) as their interests may appear.

D. Lessee shall pay all taxes, assessments and other governmental charges of whatsoever kind or character paid by Lessee relating to each Car on the Lease, except any taxes on income imposed on Lessor. Lessee will comply with all state and local laws requiring the filing of ad valorem tax returns on the Cars. Applicable tax returns shall be available for Lessor to review.

E. Lessee shall maintain and keep in effect public liability insurance (or renewal or replacement policies in amounts equal to its existing insurance, unless otherwise mutually agreed upon) insuring both Lessor and Lessee against damages and claims for personal injury, death and property damage in an amount not less than [REDACTED] per occurrence, of which Lessee may self insure against the first [REDACTED] of such risk(s) per occurrences(s), and shall continue to name Lessor as an additional insured for twelve (12) months after this Agreement is terminated on claims related to occurrences while Cars were under lease to the Paducah & Louisville Railway, Incorporated. All such insurance shall be in form, amount and with companies satisfactory to Lessor. Each Policy of Insurance shall provide for 30 days prior written notice of cancellation or modification to Lessor. Lessee shall pay all premiums for such insurance and shall deliver to Lessor the policies of insurance or duplicates thereof, and such other evidence of coverage satisfactory to Lessor.

6. Lease Rental

A. The Lessee agrees to pay the Lessor rental for each Car subject to this Lease for thirty-six (36) monthly installments, payable monthly in advance. The monthly payments shall be in the amount of [REDACTED] each per Car. Rental shall become effective with regard to each Car as of the Effective Date. The Lease shall begin on the Effective Date and shall continue in effect with regard to each of the Cars until returned to the Lessor at the end of the term of this Agreement, as hereafter provided in Section 9. Payment of Lease Rental shall be made to the Lessor's agent (hereinafter "Agent") at the address specified in Section 13, or to such other place as Lessor may direct, with the first month's payment due on the Effective Date. Any costs incurred by the Lessor in collecting Rental wrongfully withheld by Lessee, including reasonable attorney fees, will be paid by the Lessee.

Lessee shall not be entitled to any abatement of rent, reduction thereof or set-off, counterclaim, recoupment or defense against rent of any other amount payable hereunder for any reason whatsoever, including, but not limited to, abatements, reductions, set-offs, counterclaims, recoupments or defenses due or alleged to be due by reason of any past, present or future claims of Lessee against Lessor or any other person for any reason whatsoever, except to the extent of any abatement under this Section 6; nor shall this Agreement terminate or the obligations of Lessee be otherwise affected by reason of any defect in condition, design, operation or fitness for use of any Car or damage to or loss of possession or loss of use, or destruction of all or any of such Cars from whatever cause and of whatever duration, except as otherwise provided in this Section 6, or the prohibition of or other restriction against Lessee's use of all or any such Cars, or the interference with such use by any person or entity or the invalidity or unenforceability or lack of due authorization of this Agreement or any insolvency of or the institution of bankruptcy, reorganization or similar proceeding against Lessee.

B. Upon acceptance of the Cars, as set forth in Section 3 hereof, with reporting marks on each Unit as set forth in Section 4 and Equipment Schedule 1 hereto, Lessee shall enjoy all car hire earnings (per diem and mileage) thereafter until the expiration or sooner termination of this Lease. If reporting marks are other than Lessors, Lessor shall not be responsible for collection of any car hire earnings and such responsibility shall lie solely with Lessee.

C. In the event damage beyond repair or destruction of a Car, either on rail lines of Lessee or rail lines of another railroad has been reported in accordance with Rule 107 of the Field Manual of AAR Interchange Rules, Lessee will, if damage to the Car occurs on rail lines of Lessee, submit appropriate amount due to Lessor, or, if damage to the Car occurs on rail lines other than its own, cause the appropriate amount to be collected from the railroad responsible for the Car, and see that such amount is forwarded to Lessor. Lessee shall continue to make its rental payments through the date that the settlement value payment pursuant to Rule 107 of the AAR Field Manual of AAR Interchange Rules is paid. Upon receipt of such payment Lessor will refund to Lessee the rental payments paid to Lessor beginning when the casualty occurrence was reported to the Lessor through the date that the settlement value was received by Lessor. Upon the making of such payment by the Lessee in respect of a Car, the rental for such Car shall cease to accrue as of the date of such payment, the term of this Lease as to such Car shall terminate. Lessor has the right, in its sole discretion, to replace any and all Cars subject to a Casualty Occurrence and such replacement Cars will be subject to this Agreement as if originally a part thereof.

Except as hereinabove in this Section 6 provided, the Lessee shall not be released from its obligations hereunder in the event of, and shall bear the risk of, any Casualty Occurrence to any Cars after delivery to and acceptance thereof by the Lessee hereunder.

7. Possession and Use

A. So long as Lessee shall not be in default under this Agreement, Lessor shall not interfere with Lessee's possession, use and quiet enjoyment of the Cars in accordance with the terms of this Agreement. Lessee shall use the Cars in the manner and to the extent Cars are customarily used in the railroad freight business. However, Lessee's rights shall be subject and subordinate to the rights of any owner or secured party under any financing agreement entered into by Lessor in connection with the acquisition of Cars; i.e., upon notice to Lessee from any such secured party or owner that an event of default has occurred and is continuing under such financing agreement, such party may require that all rent shall be made directly to such party and/or that the Cars be returned in accordance with Section 9, to such party which at such time all obligations of Lessee shall cease. Lessee agrees that to the extent it has physical possession and can control use of the Cars, the Cars will at all times be used and operated under and in compliance with the laws of the jurisdiction in which the same may be located and in compliance with all lawful acts, rules and regulations and orders of any governmental bodies or officers having power to regulate or supervise the use of such property, (including, without limitation, the rules of the United States Department of Transportation, the Interstate Commerce Commission, and the current Interchange Rules or supplements thereto of the Mechanical Division, Association of American Railroads, as the same may be in effect from time to time) except that either Lessor or Lessee may in good faith and by appropriate proceedings contest the application of any such rule, regulation or order in any reasonable manner at the expense of the contesting party.

B. Lessee will not directly or indirectly create, incur, assume, or suffer to exist any mortgage, pledge, lien, charge, encumbrance, or other security interest or claim on or with respect to the Cars or any interest therein or in this Agreement or Schedule thereto. Lessee will promptly, at its expense, take such action as may be necessary to duly discharge any such mortgage, pledge, lien, charge, encumbrance, security interest, or claim if the same shall arise at any time.

8. Default

A. The occurrence of any of the following events shall be an event of default:

- (i) The nonpayment by Lessee of any rental or other sum required herein to be paid by Lessee within ten (10) days after the date any such payment is due.
- (ii) The breach by Lessee of any other term, covenant or condition of this Agreement, which is not cured within fifteen (15) days.
- (iii) The insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.
- (iv) The filing of any involuntary petition under any bankruptcy, reorganization, insolvency or moratorium law against Lessee that is consented to by Lessee or is not dismissed within thirty (30) days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within thirty (30) days from the date of said filing or appointment.
- (v) Any action by Lessee to discontinue rail service on all or a portion of its tracks or abandon any of its rail properties pursuant to applicable provisions of the Interstate Commerce Act or the laws of any state, if such action might reasonably unfavorably affect payments earned by the Cars.

B. Upon the occurrence of any event of default, Lessor may, at its option, terminate this Agreement and may:

- (i) Proceed by any lawful means to enforce performance by Lessee of this Agreement or to recover damages for a breach thereof (and Lessee

agrees to bear Lessor's costs and expenses, including reasonable attorney's fees, in securing such enforcement), or

(ii) By notice in writing to Lessee, terminate Lessee's right of possession and use of the Cars, whereupon all rights and interest of Lessee in the Cars shall terminate; and thereupon Lessor may enter upon any premises where the Cars may be located and take possession of them and henceforth hold, possess and enjoy the same free from any right of Lessee. Lessor shall nevertheless have the right to recover from Lessee any and all rental and other amounts which under the terms of this Agreement may then be due or which may have accrued to the date the Cars are returned or terminated, whichever is later.

9. Termination

At the expiration or termination of this Agreement as to any Cars, Lessee will surrender possession of such Cars to Lessor by delivering the same to Lessor in interchange condition suitable for grain loading, ordinary wear and tear excepted and in conformity with all applicable laws and regulations including AAR Code of Rules and FRA Railroad Freight Car Safety Standards. A Car shall be no longer subject to this Agreement upon the removal of Lessee's railroad markings from the Car and the placing thereon of such markings as may be designated by Lessor (1) by Lessee or (2) by another railroad line which has physical possession of the Car at the time of or subsequent to termination of the lease term as to such Car. If such Cars are not on the railroad line of Lessee upon such expiration or termination or are subsequently returned to Lessee's railroad line, Lessee shall at its own expense within five (5) working days remove Lessee's railroad markings from the Cars and place thereon such markings as may be designated by Lessor. After the removal and replacement of markings, Lessee shall use its best efforts to load such Cars with freight and deliver them to a connecting carrier for shipment. Lessee shall provide up to one hundred twenty (120) days free storage on its railroad tracks for Lessor or the subsequent lessee of any terminated Car.

10. Indemnities

Lessee will defend, indemnify and hold Lessor harmless from and against (1) any and all loss or damage of or to the Cars, usual wear and tear excepted, unless occurring while Lessee has physical possession of Cars and (2) any claim, cause of action, damage, liability, cost or expense (including reasonable attorney fees and expenses) which may be asserted against Lessee or Lessor with respect to the Cars other than loss or physical

damage (unless such loss or physical damage occurs through delivery of the Cars to Lessee's railroad line), and which arises out of the leasing, use, maintenance, repair, replacement, operation, condition, or return of the Cars (whether in connection with defects, if any, that are latent or discoverable by Lessor or Lessee).

11. Representation, Warranties and Covenants

Lessee represents, warrants and covenants that:

(i) Lessee is a corporation duly organized, validly existing and in good standing under the laws of the state where it is incorporated and has the corporate power and authority and is duly qualified and authorized to do business wherever necessary to carry out its present business and operations and to perform its obligations under this Agreement.

(ii) This Agreement has been duly authorized, executed and delivered by Lessee and constitutes Lessee's legal, valid and binding obligation, enforceable in accordance with its terms except as enforcement thereof may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the rights of creditors generally and general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(iii) The entering into and performance of this Agreement will not violate any judgment, order, law or regulation applicable to Lessee, or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Cars pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

(iv) There is no action or proceeding pending or threatened against Lessee before any court or administrative agency or other governmental body which might result in any material adverse effect on the business, properties and assets, or conditions, financial or otherwise, of Lessee.

(v) There is no fact which Lessee has not dis-closed to Lessor in writing, nor is Lessee a party to any agreement or instrument or subject to any charter or other corporate restriction which,

so far as the Lessee can now reasonably foresee, will individually or in the aggregate materially adversely affect the business, condition or any material portion of the properties of the Lessee or the ability of the Lessee to perform its obligations under this Agreement.

12. Inspection

Lessor shall at any time during normal business hours, upon reasonable advance notice and execution of necessary waiver forms, have the right to enter the premises where the Cars may be located for the purpose of inspecting and examining the Cars to insure Lessee's compliance with its obligations hereunder. Lessee shall immediately notify Lessor of any accident connected with the Cars. Lessee shall also notify Lessor in writing within five (5) days after any attachment, tax lien or other judicial process which shall attach to any Car. Lessee shall furnish to Lessor promptly upon its becoming available, a copy of its annual report or copies of any other income and balance sheet statements required to be submitted to the ICC and/or state agencies.

13. Miscellaneous

A. This Agreement and the Equipment Schedules contemplated hereby shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, except that Lessee may not without the prior written consent of Lessor assign this Agreement or any of its rights hereunder or sublease the Cars to any party, and any purported assignment or sublease in violation hereof shall be void.

B. Both parties agree to execute the documents contemplated by this transaction and such other documents as may be required in furtherance of any financing agreement entered into by Lessor in connection with the acquisition of the Cars in order to confirm the financing party's interest in and to the Cars, this Agreement and Schedules, hereto and to confirm the subordination provisions contained in Section 7.

C. It is expressly understood and agreed by the parties hereto that this Agreement constitutes a lease of the Cars only and no joint venture or partnership is being created. Notwithstanding the calculation of rental payments, nothing herein shall be construed as conveying to Lessee any right, title or interest in the Cars except as a lessee only.

D. This Agreement shall be governed by and construed according to the laws of the Commonwealth of Massachusetts.

E. All notices hereunder shall be in writing and shall be deemed given when delivered personally or when deposited in the United States mail, postage prepaid, certified or registered, addressed as set forth in Section 13 H below.

F. Lessor shall have the right, upon reasonable advance notice and signing of necessary waiver forms, to examine the physical facilities of the Lessee, loading data, and other pertinent information which may affect the use, maintenance, insurance and earning capacity of the Cars.

G. Lessor and Lessee agree that this Agreement, including Equipment Schedule I attached hereto and made a part hereof, shall be recorded with the Interstate Commerce Commission, at the expense of Lessee.

H. Any notice required or permitted to be given hereunder shall be given in writing either by telex or by mail and if mailed shall be sent, postage prepaid, addressed as follows:

If to Lessor:

Federal Deposit Insurance
Corporation
c/o BOT Financial
125 Summer Street 32
Boston, MA 02110-1625
Attn: Mr. David Meehan

Agent:

Helm Financial Corporation
One Embarcadero Center
Suite 3320
San Francisco, CA 94111
ATTN: William M. Peterson

If to Lessee:

Paducah & Louisville Railway,
Inc.
1500 Kentucky Avenue
Paducah, Kentucky 42001
ATTN: Manager of Car Service

Either party hereto may change the address to which notice is to be mailed by written notice thereof to the other.

IN WITNESS WHEREOF, the parties hereto have
executed this Agreement as of the date first above written.

FEDERAL DEPOSIT INSURANCE
CORPORATION
as Receiver for
NEW BANK OF NEW ENGLAND N.A.
(Assignee of
NEMLC ASSOCIATES NO. 1)

PADUCAH & LOUISVILLE RAILWAY,
INC.

By: Charles K. Beve
Title: Account Officer
Date: 10/17/91

By: Stuart E. Stephany
Title: Manager Car Service
Date: 10/30/91

EQUIPMENT SCHEDULE 1

Paducah & Louisville Railway, Inc. hereby leases from the Federal Deposit Insurance Corporation, as Receiver for New Bank of New England, N.A. (Assignee of NEMLC Leasing Associates No. 1) (FDIC) and FDIC hereby leases to Paducah & Louisville Railway, Inc., the following railcars pursuant to that certain Railcar Lease Agreement dated as of November 1, 1991.

<u>A.A.R. Mechanical</u> <u>Mechanical</u> <u>Designation</u>	<u>Description</u>	<u>Reporting Marks</u> <u>and Car Numbers</u>	<u>Number</u> <u>of</u> <u>Cars</u>
LO	100 ton, roller bearing 4750 cubic foot, triple pocket, Pullman built, covered hopper railroad cars equipped with the same trough hatches and outlet gates.	PAL 2152-2153 2155 2162 2164 2167-2169 2172 2174 2176 2179 2181 2189 2192-2195 2197 2199-2202 2204-2206 2208-2220 2226-2229 2234 2236-2238 2241 2245	49

FEDERAL DEPOSIT INSURANCE
CORPORATION
as Receiver for
NEW BANK OF NEW ENGLAND, N.A.
(Assignee of
NEMLC LEASING ASSOCIATES NO. 1)

PADUCAH & LOUISVILLE INC.
INC.

By: Charles K. Bene
Title: Account Officer
Date: 10/17/91

By: Stuart E. Stephany
Title: Manager Car Service
Date: 10/30/91

STATE OF Massachusetts)
COUNTY OF Norfolk) S

On this 17th day of October, 1991, before me personally appeared Charles K. Bene, to me personally known, who, being by me duly sworn, says that he is Account Officer of FDIC; that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Jos. C. Aquella
Notary Public

[Notarial Seal]

My Commission Expires January 6, 1995

STATE OF KENTUCKY)
COUNTY OF McCracken) S

On this 30th day of October, 1991, before me personally appeared Stuart C. Stephens to me personally known, who, being by me duly sworn, says that he is Manager Car Service of Paducah & Louisville Railway, Inc.; that said instrument was signed on behalf of said Corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said Corporation.

Susan C. Ramage
Notary Public

[Notarial Seal]

My Commission Expires 8-14-93